Filed 4/1/09 In re C.G. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.G., a Person Coming Under the Juvenile Court Law.	B208753 (Los Angeles County Super. Ct. No. CK69958)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.G., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. D. Zeke Zeidler, Judge. Reversed with directions.

Diana W. Prince, under appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, Timothy M. O'Crowley, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

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Appellant T.G. (Father) appeals from the juvenile court's order sustaining a petition brought pursuant to Welfare and Institutions Code section 300, subdivisions (b) and (g)[1] alleging that he and M.G. (Mother) failed to provide the necessities of life for their then 15-year-old daughter, C.G. Father contends that substantial evidence did not support the juvenile court's findings. We agree with Father and reverse and vacate the juvenile court's orders and dismiss the section 300 petition. The juvenile court asserted jurisdiction over C.G. solely to ensure that she and Father received services. But there was no basis for jurisdiction because there was insufficient evidence to show that there was a substantial risk of serious harm to C.G. at the time of the jurisdiction hearing.

FACTUAL AND PROCEDURAL BACKGROUND

C.G. came to the attention of the Los Angeles County Department of Children and Family Services (Department) in September 2007 when she was 15 years old. On September 13, 2007, Los Angeles Police Department Officer Javier Pimentel observed C.G. loitering in a park. C.G. provided him with conflicting statements about her identification, address, school and family. Initially, she stated that, with her father's permission, she traveled to California in July via bus from her home in Utah to visit friends in California, and planned on returning home in October. She said she had been staying with her cousin, Rojelio G. When Officer Pimentel contacted him, he clarified that his name was Rojelio C. and he was not C.G.'s cousin; he was a friend of C.G's older sister's boyfriend and had allowed C.G. to stay with him a few times. He told Officer Pimentel that he would prefer C.G. not stay with him anymore to avoid trouble.

Officer Pimentel learned that C.G. had been cited for theft in August 2007 and cited her for truancy. Ultimately, C.G. admitted that she had run away from home. Three years earlier, Mother had abandoned the family with another man and C.G. had not seen her since. She had saved up her money and bought a bus ticket to California in the

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[1] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

hope of finding Mother. She stated that though she and Father sometimes argued about his break-up with Mother, he was not abusive toward her and they got along very well. She wanted to return home to Utah. Nevertheless, she was unable to provide contact information for her family.

The Department had not located either Father or Mother by the time of the September 17, 2007 detention hearing. The juvenile court ordered C.G. detained in shelter care.

In connection with an October 24, 2007 jurisdiction/disposition report, a social worker interviewed C.G. who reported: "'My mom and dad divorced a while ago. We looked for my mom and could not find her. She just left one day and did not tell us and she has not looked for us. . . . My dad and my little brother and sister and I moved to Utah about four months ago.'" After saving up enough money for a ticket, C.G. left Utah by bus. She stayed with her older sister for a while in Los Angeles and then with an older woman for whom she cared. She did not attend school. Though she told people whom she met she had permission from her father to visit in California, she stated: "'The truth is that I left to find my mom. My dad does not know where I am. I thought I could find my mom here in the San Fernando Valley. I was doing fine with my dad. He takes good care of me and I had everything I wanted there. I want to go back to live with him. I don't know how to get a hold of him. I don't remember the address where we lived it was 803 V[] or 8030 V[] . . . . I had it written down somewhere.'"

Also on October 24, 2007, the Department filed an amended section 300 petition alleging counts under subdivision (b) for Father's and Mother's inability to provide the necessities of life, including food, clothing shelter and medical care, and inability to supervise, and under subdivision (g) for Father's and Mother's failure to support C.G.

Though the Department located C.G.'s former school in Utah and learned she had not attended since April 2007, it was unable to locate Father, Mother or any other relatives. But at the October 24, 2007 hearing, the Department reported there had been contact with Father in Salt Lake City and the juvenile court appointed counsel for him. In an addendum report filed in connection with the hearing, the Department indicated that

Father had called the social worker after receiving a message from his niece that the Department had information about C.G. Father reported that Mother had abandoned the family about four years earlier, and in September 2006 he moved with his family to Utah to try to provide his children with a better life. He moved in with his paternal uncle and aunt who helped care for the children. He reported that even though he had consistently provided for his children and tried to supervise C.G. as much as possible, she had gotten out of control. She had become rebellious and began skipping school. In December 2006, C.G. ran away from home. As soon as C.G. left and Father realized she was not with any of her friends, he filed a missing persons report with the police department in Salt Lake City. Father wanted C.G. to return home.

On November 13, 2007, the juvenile court continued the jurisdiction hearing to permit Children's Protective Services (CPS) in Utah to evaluate Father's home for placement. In the meantime, it gave the Department discretion to permit C.G. to have a vacation visit with Father.

In a November 30, 2007 report, the Department indicated that a Utah social worker had made an unannounced visit to Father's home. The home was newly built, clean and appropriate. Ten individuals resided in the home, including Father, his paternal aunt and uncle, C.G.'s two younger siblings and their younger cousins. All those interviewed supported C.G.'s return. An investigation revealed that no one in the home had a history with CPS. The social worker recommended that the family have supportive services to deal with C.G. and opined that they did not understand the magnitude of C.G.'s needs.

After CPS had additional contact with Father, the Department recommended that C.G. be reunified with Father, but that the family be supervised through the Interstate Compact on the Placement of Children (ICPC) in view of C.G.'s difficult behavior. At a December 21, 2007 hearing, the juvenile court gave the Department discretion to release C.G. to Father, but continued the matter to allow the social worker in Utah to have a face-to-face meeting with Father. To facilitate that process, the juvenile court requested that an expedited ICPC form be filed. In response to the juvenile court's inquiry as to

whether there was anything C.G. wanted him to know, she responded "I just want to go home."

In an addendum report for the January 31, 2008 hearing, the Department recommended that the section 300 petition be sustained with certain amendments and that C.G. remain suitably placed pending the outcome of the ICPC process and Father's home study.[2] At the jurisdiction hearing, Father was not present. Over Father's counsel's objections, the juvenile court sustained the section 300 petition as amended. It sustained paragraph b-1, striking Father from the allegations and finding that Mother had failed to provide C.G. with the necessities of life and such failure placed C.G. at risk; dismissed paragraph b-2; sustained paragraph b-3, finding C.G. had run away and failed to attend school, and that Mother's and Father's inability to care for her special needs placed her at risk; and sustained paragraph g-1, striking Father from the allegations and finding that Mother's failure to provide support had placed C.G. at risk.

In a report for the March 27, 2008 disposition hearing, the Department reported that Father's home study had been denied because certain adults living in the home were undocumented and thus background checks could not be completed on them. Nonetheless, a report from a CPS home visit indicated that the home and surrounding neighborhood were appropriate and that Father "'appears to care a great deal for his daughter and efforts to reunify would appear appropriate.'" The CPS social worker also reported that the family acknowledged the potential difficulties they might have with C.G.'s return given her past behavior, but were receptive to seeking support services and resources. The juvenile court continued the disposition hearing, stating that it would inquire about the possibility of transferring the case to Salt Lake City.

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[2] Contrary to Father's assertion on appeal, the juvenile court did not err in ordering an ICPC before the jurisdictional hearing. While "ICPC compliance is not required for an out-of-state placement with a parent, nothing in the ICPC prevents the use of an ICPC evaluation as a means of gathering information before placing a child with such a parent." (*In re John M.* (2006) 141 Cal.App.4th 1564, 1572.)

The disposition hearing was continued several more times. On May 22, 2008, the Department reported that on May 15, 2008, Father and all adults in the home submitted to fingerprinting and provided acceptable identification. Father reported that he was looking for a therapeutic agency in Salt Lake City that could provide counseling to C.G. He had also inquired at the local high school about enrolling C.G. in school. He reported that C.G.'s earlier visit had gone well, and that he and all the family were eager to have her return home. The juvenile court allowed C.G. another vacation visit with Father to extend the disposition hearing.

Father's home study was approved on June 17, 2008. Father and C.G. were not present at the disposition hearing. On the basis of the evidence presented at the jurisdiction hearing and the Department's subsequent reports, the juvenile court declared C.G. a dependent of the court, finding by clear and convincing evidence that a substantial danger to C.G. existed in the absence of Department and court supervision. The juvenile court placed C.G. with Father under Department supervision and ordered that he be provided with reunification services.

Father timely appealed from the order sustaining jurisdiction. (See *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393, fn. 8.)

DISCUSSION

Father contends that substantial evidence did not support the juvenile court's asserting jurisdiction over C.G. under section 300, subdivisions (b) and (g). We agree.

We review the juvenile's court's jurisdictional findings for substantial evidence. (*In re David M.* (2005) 134 Cal.App.4th 822, 829; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) Under this standard, we review the record to determine whether there is any reasonable, credible, and solid evidence to support the juvenile court's conclusions, resolve all conflicts in the evidence, and make all reasonable inferences from the evidence in support of the court's orders. (*In re Savannah M., supra,* 131 Cal.App.4th at p. 1393; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.) "'However, substantial evidence is not synonymous with *any* evidence. [Citations.] A decision

supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] Furthermore, "[w]hile substantial evidence may consist of inferences, such inferences must be 'a product of logic and reason' and 'must rest on the evidence' [citation]; *inferences that are the result of mere speculation or conjecture cannot support a finding* [citations]." [Citation.] "The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record." [Citation.]' [Citation.]" (*In re David M., supra*, at p. 828.)

Under section 300, subdivision (b), dependency jurisdiction is authorized when "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent . . . to adequately supervise or protect the child . . . ." (§ 300, subd. (b).) A petition's allegations under section 300, subdivision (b) must contain three elements: "'(1) neglectful conduct by the parent in one of the specified forms [i.e., the parent's failure or inability to adequately supervise or protect the child]; (2) causation; and (3) "serious physical harm or illness" to the minor, or a "substantial risk" of such harm or illness.' [Citation.]" (*In re Heather A., supra,* 52 Cal.App.4th at p. 194.) Section 300, subdivision (g), provides the juvenile court may adjudge any child a dependent child of the court if the child "has been left without any provision for support; . . . or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful." No separate allegation the child is currently suffering physical harm or is at risk of such harm is required. (See, e.g., *In re Athena P.* (2002) 103 Cal.App.4th 617, 630 [substantial evidence supported finding child left with grandparents was left without provision for support under section 300, subdivision (g), because caregivers had no authority to consent to medical treatment or enroll child in school].) The Department's burden of proof at jurisdiction is preponderance of the evidence. (§ 355, subd. (a); *In re P.A.* (2006) 144 Cal.App.4th 1339, 1344.)

On appeal, the Department concedes that jurisdiction over C.G. cannot be premised on any action or inaction on the part of Father. He was named only in paragraph b-3 of the section 300 petition, which alleged that C.G. placed herself in danger by running away and failing to attend school, and that these actions demonstrated she required a higher level of care and supervision. Paragraph b-3 further alleged: "The inability of the mother, [M.G.] and father, [T.G.] to care for the child's special needs endangers the child's physical and emotional health, safety and well being and places the child at risk of physical and emotional harm and damage." Though perhaps it was reasonable to infer that Father's inability to supervise C.G. contributed to her running away, the evidence was undisputed that C.G. was not at risk from Father at the time of the jurisdiction hearing. For the hearing, the Department reported: "From the investigators' conversations with father, [he] appears appropriate. Father [] continues to report that he would like the child, [C.G.] back in his care. [Father] reports that he is willing and capable of providing the child with the necessities of life. [Father] states that his sister-in-law who resides with the family will look after [C.G.] after school and while [Father] is at work. Further, the child [C.G.] also continues to report that she wished to return to Utah with her father and siblings. On 12/20/07, [C.G.] reported 'I want to go back with him.' [C.G.] assures that she will not attempt to run away from her father's home again as she realizes that no one will treat her as well as her own family."

The third element of section 300, subdivision (b)—a substantial risk of harm—"effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur)." (*In re Savannah M., supra,* 131 Cal.App.4th at p. 1396.) Thus, "'[w]hile evidence of past conduct may be probative of current conditions, the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm. [Citations.]' [Citation.] '[P]revious acts of neglect, standing alone, do not establish a substantial risk of harm; there must be some reason beyond mere speculation to believe they will reoccur. [Citations.]' [Citation.]" (*In re David M., supra,* 134 Cal.App.4th at pp. 831-832.) Here,

as the Department acknowledges, there was no evidence demonstrating that Father posed a substantial risk of harm to C.G. at the time of the jurisdiction hearing. (See, e.g., *In re Alysha S.* (1996) 51 Cal.App.4th 393, 399 [allegation that the father over one year earlier touched the minor in a manner the mother felt was inappropriate and which resulted in no physical harm did not "establish a reason for state interference with the family" where there were no allegations that the father's actions were likely to recur]; cf. *In re Steve W.* (1990) 217 Cal.App.3d 10, 22 [where the mother had two previous relationships with abusive persons, juvenile court's concern that the mother would enter a new relationship with another abusive person could not be the basis for removing the child from her custody, as the decision would be based on pure speculation and not substantial evidence].)

Notwithstanding its concession, however, the Department urges that jurisdiction was appropriate under section 300, subdivisions (b) and (g) on the basis of Mother's conduct. It argues that Mother's act of abandoning the family created the need for C.G. to run away to find Mother and that it was "highly likely" C.G. would run away again. The Department's argument finds no support in either the law or the evidence.[3]

We agree with Father that *In re Janet T.* (2001) 93 Cal.App.4th 377 provides the most apt analogy. There, the mother and her children lacked a stable residence and lived intermittently in various shelters and with relatives; a prior medical evaluation also showed that the mother suffered from psychological problems. (*Id.* at pp. 382–383.) A sustained dependency petition alleged that the children were at substantial risk of harm pursuant to section 300, subdivision (b), by reason of both their mother's failing to ensure

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3 Preliminarily, we reject the Department's argument that Father waived his right to challenge jurisdiction on the basis of Mother's conduct because he did not object on that ground at the jurisdiction hearing. A party does not forfeit a claim of insufficient evidence to support a factual finding by failing to make that specific objection before the juvenile court. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561; see also *People v. Butler* (2003) 31 Cal.4th 1119, 1126 [a challenge to the sufficiency of the evidence to support a factual finding is an "obvious" exception to the appellate rule of forfeiture by failing to object in the trial court].)

their regular school attendance, and her mental and emotional instability putting them at risk. The petition further alleged pursuant to section 300, subdivision (g) that the father's whereabouts were unknown and he left the children without any means of support. (*In re Janet T., supra,* at pp. 387, 392.) The appellate court reversed the order sustaining jurisdiction. Though acknowledging that failing to attend school was detrimental to the children, the appellate court reasoned "that is not the same as saying the failure to attend school created a 'substantial risk' of suffering '*serious physical harm or illness*.'" (*Id.* at pp. 388–389.) Likewise, the court determined that the petition alleged no facts to suggest "how mother's mental health problems created a 'substantial risk' her children would suffer 'serious physical injury or illness.'" (*Id*. at p. 389.) There was no evidence that any of the minor injuries or health problems that the children had suffered were caused by the mother's mental health issues or continued to exist at the time the petition was sustained. (*Id*. at p. 390.)

With respect to the allegation pursuant to section 300, subdivision (g), the appellate court observed the father's absence and lack of support typically would be sufficient to sustain the allegation, noting that a juvenile court may generally take jurisdiction over a child where only one of the parents is unsuitable. (*In re Janet T., supra,* 93 Cal.App.4th at p. 392.) But the court found that the allegations did not support jurisdiction there because the father's absence was neither the reason the children were referred to the Department nor the reason the Department filed the petition. (*Ibid*.) Significantly, the court stated: "It would be anomalous to permit the fact of an absent father to be the sole justification to assert jurisdiction in this case and to detain the children from their custodial parent. If this was permitted, the DCFS could simply dispense with factually grounded petitions in any number of cases where a noncustodial parent has abandoned his or her children even in circumstances where the children are well cared for by their custodial parent. In the circumstances of this case where the children were removed from mother's custody, we find this single allegation in and of itself insufficient to support the petition against mother, as distinct from this particular father." (*Ibid*.)

Like the court in *In re Janet T., supra*, 93 Cal.App.4th 377, we cannot conclude that Mother's abandonment of C.G. was a sufficient basis to assert jurisdiction. The evidence before the juvenile court at the time of the jurisdiction hearing demonstrated that Father, C.G.'s custodial parent, was appropriate and ready to care for C.G. It was undisputed that C.G. repeatedly indicated her desire to return home. Beyond the Department's speculation regarding the likelihood that C.G. would attempt to run away again, there was no evidence to suggest she intended to leave Father's home once she returned. Because there was no evidence that Mother's absence posed a substantial risk of physical harm or illness to C.G. at the time of the jurisdiction hearing, the evidence was insufficient to support jurisdiction under section 300, subdivision (b). Furthermore, according to *In re Janet T., supra*, 93 Cal.App.4th 377, Mother's absence in and of itself was insufficient to support jurisdiction under section 300, subdivision (g).

The Department attempts to distinguish *In re Janet T., supra*, 93 Cal.App.4th 377 on the ground that Mother's absence created a substantial risk of physical harm to C.G. by prompting C.G. to run away and look for her. Preliminarily, we observe that this causal connection is tenuous at best, given that Mother abandoned the family over three years before C.G. ran away to look for her. But, more importantly, there was no evidence to suggest that C.G. intended to continue to pursue Mother's whereabouts by running away. Rather, according to her uncontradicted statements, C.G. did not intend to run away again.

"[T]he purpose of section 300, subdivision (b) is to protect the child from a substantial risk of *future* serious physical harm and that risk is determined as of the time of the jurisdictional hearing." (*In re Savannah M., supra*, 131 Cal.App.4th at p. 1397; accord, *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 ["the question under section 300 is whether circumstances *at the time of the hearing* subject the minor to the defined risk of harm"].) In January 2008 when the jurisdiction hearing was held, the Department did not meet its burden to show that C.G. was at risk of future harm solely by reason of Mother's abandonment. Indeed, the Department argued at the hearing that jurisdiction was "the responsible thing to be recommending the appropriate things." While we understand the

Department's and the juvenile court's desire to assist this family, without evidence of any substantial risk of harm to C.G. by reason of Mother's or Father's conduct, there was no basis for the juvenile court to assert jurisdiction.

DISPOSITION

The jurisdictional order and all subsequent orders are reversed and the matter is remanded with directions to the juvenile court to vacate those orders and dismiss the section 300 petition.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ